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# Supreme Court of the United States

**October Term, 1966**

**No. 1386**

ADAM CLAYTON POWELL, JR., et al.,
*Plaintiffs-Petitioners,*

*against*

JOHN W. McCORMACK, et al.,
*Defendants-Respondents.*

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

## MOTION AND BRIEF OF THE NATIONAL BAR ASSOCIATION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

REVIUS ORTIQUE
*Attorney for Amicus Curiae*
*National Bar Association*
2140 St. Bernard Avenue
New Orleans, Louisiana

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## Motion of the National Bar Association for Leave to File Brief *Amicus Curiae*

The National Bar Association has sought the consent of both parties to this matter to submit a brief *amicus curiae.* Petitioners have consented.

While respondents did not deny permission, they refused to grant permission, thus the National Bar Association respectfully moves this Court to accept a brief *amicus curiae,* from the National Bar Association.

Respectfully submitted,

REVIUS ORTIQUE
Attorney for *Amicus Curiae*
National Bar Association
2140 St. Bernard Avenue
New Orleans, Louisiana

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## BRIEF OF THE NATIONAL BAR ASSOCIATION, *AMICUS CURIAE*

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### Statement of Interest

The NBA is the National Bar Association which represents predominantly Negro lawyers from every State in the Union.. Members of the NBA have, for years, been in the forefront of the fight to secure equal justice under the law for the many Negro petitioners who have stood before this Court.

Our members have especially been active in the fight throughout the South to have those rights granted to Negro Americans under the Thirteenth, Fourteenth and Fifteenth Amendments protected by this Court.

On February 18th, 1967, by unanimous consent of the Executive Council of the NBA, we sent a telegram to

Chairman Celler requesting that the telegram be made a part of the official record in the proceedings. In that telegram we urged that the Committee seat Mr. Powell since the only constitutional requirements for seating Mr. Powell were those of age, citizenship and inhabitancy.

The Petitioners have claimed, and the NBA believes, that while Mr. Powell was a duly elected Congressman possessing all the qualifications necessary under the Constitution, the Congress of the United States refused to seat him in violation of his rights and those of his constituency—the Eighteenth Congressional District—in violation of the Thirteenth, Fourteenth and Fifteenth Amendments.

In determining whether there has been a violation of the Thirteenth, Fourteenth or Fifteenth Amendments to the Constitution of the United States, this Court has constantly declared that it need not inquire into or make a determination regarding motive or intent. And a determination that these three Amendments had been violated would be made from an objective examination of the disparity of treatment given to Petitioners who stood before this Court as opposed to that which is normally given as a matter of fundamental due process. *Edwards* v. *South Carolina*, 372 U.S. 229; *Blackburn* v. *Alabama*, 361 U.S. 199; *Spano* v. *New York*, 360 U.S. 315; *Napue* v. *Illinois*, 360 U.S. 264; *Muir* v. *Louisville Park Theatrical Association*, 120 F. Supp. 525 (W.D. Ky. 1951), aff'd 202 F.2d 275 (6th Cir. 1953), vacated and remanded 344 d.S. 971; *Niemotko* v. *Maryland*, 340 U.S. 268; *Feinder* v. *New York*, 340 U.S. 315, 316, 322 fn. 4; *Watts* v. *Indiana*, 338 U.S. 49, 50-51; *Hooven & Allison Co.* v. *Evatt*, 324 U.S. 562, 659; *Pierre* v. *Louisiana*, 306 U.S. 354; *Baltimore & Ohio Railroad Company* v. *United States*, 298 U.S. 349, 372; *St. Joseph Stock Yards Company* v. *United States*, 298 U.S. 38, 49-55; *Norris* v. *Alabama*, 249 U.S., 587, 589, 590; *Ohio Valley Water Company* v. *Ben Avon Borough*, 253 U.S. 287. Cf. *Ng Fung Ho* v. *White*, 259 U.S., 276, 284, 285.

We respectfully call to the Court's Attention that the treatment given Mr. Powell in this case was a violation of all the normal propositions of evidentiary law. And an overwhelming Negro constituency—the Eighteenth Congressional District of New York—has suffered and will continue to suffer irreparable injury unless this Court uses its extraordinary power to bring this matter to a speedy close. We urge upon this Court that the ends of justice can only be served by having this matter once and for all speedily resolved. So long as the largest black ghetto in this country remains unrepresented, there can be little hope for those who believe in the process of law and order.

We respectfully ask this Court to consider four sets of facts which undisputedly show that the treatment given Mr. Powell, and Mr. Powell's constituency—a predominantly black ghetto—has been different from that ever given any other person by the House of Representatives.

(1) Mr. Powell's exclusion is based upon factors which have never been factors in any other exclusion in the House of Representatives, c.f. B.F. Whitmore.

(2) On the crucial vote to seat Mr. Powell the controlling vote was that of the former slave owning southern and border states.

(3) The House of Representatives both in 1965 and in 1967 through the votes of the same people disenfranchised Negroes rather than risk displeasure of the whites.

(4) It is an undisputed fact which demonstrates clearly a disparity of treatment that Senator Dodd in a contemporaneous proceeding before the Senate of the Congress was accorded all the elements of due process and procedural safeguards known in adversary proceedings. The action of censure by the Senate based upon findings of fact which would appear

to establish that Mr. Dodd had violated statutes and standards of conduct far more serious than anything charged against Mr. Powell.

Of the four points mentioned above, we respectfully wish to call to this Court's attention the nature of the crucial vote on the Celler Amendment, which would have seated Mr. Powell. The controlling vote under those circumstances was the vote of the former slave owning southern and border states and Oklahoma.

On the crucial vote 126 of the 140 held by the former slave owning southern and border states were cast as a block against the consideration of the Celler Amendment.[1]

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[1] THE NAY VOTES FOR ADAM CLAYTON POWELL

| | |
|---|---|
| Virginia ..... Abbitt | Texas ..... De la Garza |
| Mississippi ..... Abernethy | Alabama ..... Dickinson |
| Tennessee ..... Anderson | South Carolina ..... Dorn |
| Alabama ..... Andrews | Texas ..... Dowdy |
| South Carolina ..... Ashmore | Virginia ..... Downing |
| Oklahoma ..... Belcher | Tennessee ..... Duncan |
| Florida ..... Bennett | Alabama ..... Edwards |
| Alabama ..... Bevil | Tennessee ..... Everett |
| Georgia ..... Blackburn | Tennessee ..... Evins |
| Tennessee ..... Blanton | Maryland ..... Fallon |
| Georgia ..... Brinkley | Florida ..... Fascell |
| Tennessee ..... Brock | Texas ..... Fisher |
| North Carolina ..... Broyhill | Georgia ..... Flynt |
| Virginia ..... Broyhill | North Carolina ..... Fountain |
| Alabama ..... Buchanan | Tennessee ..... Fulton |
| Florida ..... Burke | Florida ..... Fuqua |
| Texas ..... Burleson | North Carolina .. Galifianakis |
| Texas ..... Bush | North Carolina ..... Gardner |
| Texas ..... Cabell | Maryland ..... Garmatz |
| Kentucky ..... Carter | Arkansas ..... Gathings |
| Texas ..... Casey | South Carolina ..... Gettys |
| Mississippi ..... Colmer | Florida ..... Gibbons |
| Kentucky ..... Cowger | Maryland ..... Gude |
| Florida ..... Cramer | Florida ..... Gurney |
| Missouri ..... Curtis | Georgia ..... Hagan |
| Georgia ..... Davis | Florida ..... Haley |

Therefore out of the 202 votes cast against consideration of the previous question—the Celler Amendment—only 76

Missouri ..... Hall
Mississippi ..... Hardy
Louisiana ..... Hebert
West Virginia ..... Hechler
North Carolina ... Henderson
Florida ..... Herlong
Missouri ..... Hull
Maryland ..... Hungate
Missouri ..... Ichord
Oklahoma ..... Jarman
North Carolina ..... Jonas
Alabama ..... Jones
Missouri ..... Jones
North Carolina ..... Jones
Texas ..... Kazen
West Virginia ..... Kee
North Carolina .... Kornegay
Tennessee ..... Kuykendall
Georgia ..... Landrum
North Carolina ..... Lennon
Louisiana ..... Long
Maryland ..... Long
South Carolina .... McMillan
Maryland ..... Machen
Texas ..... Mahon
Virginia ..... Marsh
Maryland ..... Mathias
Arkansas ..... Mayne
Arkansas ..... Mills
Mississippi ..... Montgomery
Kentucky ..... Natcher
Alabama ..... Nichols
Georgia ..... O'Neal
Louisiana ..... Passman
Texas ..... Patman
Florida ..... Pepper
Texas ..... Pickie
Texas ..... Poage
Virginia ..... Poff
Texas ..... Pool
Texas ..... Price
Arkansas ..... Pryor
Texas ..... Purcell
Tennessee ..... Quillen
Missouri ..... Randall
Louisiana ..... Rarick
South Carolina ..... Rivers
Texas ..... Roberts
Florida ..... Rogers
Virginia ..... Satterfield
Virginia ..... Scott
Alabama ..... Selden
Florida ..... Sikes
West Virginia ..... Slack
Oklahoma ..... Smith
Kentucky ..... Snyder
West Virginia ..... Staggers
Georgia ..... Stephens
Kentucky ..... Stubblefield
Georgia ..... Stuckey
North Carolina ..... Taylor
Texas ..... Teague
Georgia ..... Thompson
Virginia ..... Tuck
Louisiana ..... Waggonner
Virginia ..... Wampler
South Carolina ..... Watson
Kentucky ..... Watts
Texas ..... White
North Carolina ..... Whitener
Mississippi ..... Whitten
Mississippi ..... Williams
Louisiana ..... Willis
Indiana ..... Roudebush
Indiana ..... Hamilton

NOT VOTING

New Jersey ..... Cahill
Illinois ..... Dawson
Louisiana ..... Edwards
Maryland ..... Friedel

more votes were necessary to carry the vote against the acceptance of the Celler Committee report and resolution. The rest of the United States voted 2-to-1 to seat Mr. Powell. Therefore, if the southern vote had been cast, not as a single block, but in the same way as the votes for the rest of the country were cast, Mr. Powell would have been seated rather than—excluded.

That vote alone clearly makes it possible for the Negro voters of the Eighteenth Congressional District to draw the inference that their representative was not acceptable to the all-white majority of the House which had overridden the sober advice of the House leadership.

Any doubts as to the prevalance of racism as an overriding factor in this vote can be laid to rest if we consider first the statement of Congressman Holland of Pennsylvania, as reported in the March 1 Debates on the House Floor.

> "No, Mr. Speaker, I cannot accept the notion that Adam Powell is being punished by colorblind justice. I, too, have read the mail that has been cited as 'evidence of deep public concern.' Let me quote some of the mail that I received for the Record.
>
> Shame on you and Congressman
>
> You are both nigger lovers. We will remember you at the polls next election."

Indeed, Emanuel Celler, the Chairman of the House Select Committee and the Chairman of the Judiciary Committee of the House of Representatives on national T.V. on Sunday, March 14th, 1967, affirmed that he too believed that "there was an element of race in the vote in the House that rejected the resolution which I as Chairman of the Select Committee offered". He then was asked whether the House leadership was trying to do anything to "end this racism and hysteria" in order to prevent "a repetition

of this exclusion". Mr. Celler said something which is indeed persuasive:

> "The leadership is doing all and sundry in that regard, that that racism is pretty deep. It's wide and deep. Members from the South have the strongest kinds of convictions on this matter."

If the petitioners in this case are denied certiorari of the Supreme Court in this matter they will be victims of conduct depriving them of their rights under the Thirteenth, Fourteenth and Fifteenth Amendments. After the statement of the Honorable Emanuel Celler on Sunday, May 14th, 1967, there can be no doubt that racial discrimination cannot be divorced from the act of the House of Representatives in this instance. Whatever power the House of Representatives may be able to exercise, it cannot use that power to effectuate a discrimination forbidden by the Constitution of the United States. *Yick-Wo* v. *Hopkins,* 118 U.S. 356; *Cooper* v. *Aaron,* 358 U.S. 1.

And whatever claim might be urged in general with respect to the scope of "qualifications" under Article I, § 5, it can hardly be doubted that subsequent Amendments Thirteen, Fourteen and Fifteen constituted a *pro tanto* limitation on any claimed right to exclude members on the basis of race.

The inescapable result of the utilization of the House of Representatives to use its alleged power to judge the qualifications of its members was to subject Mr. Powell to tests not required by his white counterparts and to deprive the very portion of the population of the United States which the Thirteenth, Fourteenth and Fifteenth Amendments were meant to protect, of their protection. And we pray that this Court will not allow them to say that their actions, no matter how unconstitutional, cannot be challenged in this Court.

If they are allowed to once again repeat in this Court their assertions that they are within the Constitution then they will have shaken the very foundations of the institution of judicial review itself. *Marbury* v. *Madison*, 1 Cranch 137.

Respectfully submitted,

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